Remark:

Claims 86-88, 92-128 and 135-175 are rejected under 35 U.S.C. 101 because the claimed invention is directed to a computer program, which is a non-statutory subject matter. Obviously the office action **ONCE AGAIN** failed to consider the recited claim characteristics as a whole and completely **IGNORED** the recited characteristics which, when considered as a whole, will let the rejected claim fulfill the requirement of 35 U.S.C. 101. This remark is structured into two parts. Part A enlists several repeated legal points previously presented and unanswered. Part B compares each group of claim according the group of legal points of Part A.

Part A: The legal stand points relating to a rejection under 35 U.S.C. 101:

(A1) A claim must be evaluated as a whole.

Listed below is a quotation of *MPEP 2106-II-C* last paragraph:

> *Finally, when evaluating the scope of a claim, every limitation in the claim must be considered. USPTO personnel may not dissect a claimed invention into discrete elements and then evaluate the elements in isolation. Instead, the claim as a whole must be considered. See e.g. USPQ 1, 9 (1981).*

Listed below is a quotation of section IV-C of the "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility" published in the OG Notice 22 November 2005, for determining if a claimed invention complies with the subject matter eligibility requirement of 35 U.S.C. 101:

> *In evaluating whether a claim meets the requirements of section 101, the claim must be considered **as a whole** to determine whether it is for a particular application of an abstract idea, natural phenomenon, or law of nature, rather than for the abstract idea, natural phenomenon, or law of nature itself.*

Section B follows identified how some recited characteristics supposedly are adequate to fulfill the requirement of 35 U.S.C. 101 had been ignored. No comment had been provided to explain why these characteristics were not considered, or why they are of error. The examiner is respectfully requested to reconsider these characteristics identified in section B according to the above quoted MPEP and Guideline, and explain clearly to the applicant why these recited characteristics are inadequate to fulfill the requirement of 35 U.S.C. 101 if the ground of rejection is to be withheld.

(A2) Two ways to determine if section 101 requirements are satisfied:

Listed below is a quotation of section IV-C-2 of the "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility" published in the OG Notice 22 November 2005, herein referred as **"the Guideline"**:

> *To satisfy section 101 requirements, the claim must be for a practical application of the Sec. 101 judicial exception, which can be identified in various ways:*
>
> - *The claimed invention "transforms" an article or physical object to a different state or thing.*
> - *The claimed invention otherwise produces a useful, concrete and tangible result.*

The Guideline further discusses the factors for useful, concrete and tangible result of a "Practical Application".

The examiner is respectfully requested to reconsider if the useful, concrete and tangible result of the practical application recited in the rejected claims satisfies the description of section IV-C-2 of the "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility", and if not, explain adequately to the applicant why it is not, how it can be overcome.

(A3) Recitation of claim limitation in conjunction with a physical structure or a computer executing process will turn a nonstatutory claim into a statutory product or process claim:

In several previous telephone interviews and communication between the examiner and the applicant, both parties agreed that if a computer program is claimed in conjunction with a physical structure, such as a computer memory, it is a statutory product claim. If a software program is claimed in a process where the computer is executing the computer's instructions, then it is a statutory process claim. The applicant had faithfully amended the subject claims according to the conclusion of these interviews and communications. However, the subject rejected claims still rejected under the same ground of 35 U.S.C. 101 without explaining why the position of the examiner had been changed and why the agreed amendment are now not adequate to overcome the rejection under 35 U.S.C. 101.

Section B: Comparing each rejected claim group with the legal stand points of Section A

(B1) Claims 86-88, and the corresponding method claims 92-113:

The office action seems to ignore and did not provide any comment to the following recitation of independent claim 86, when the subject claims are considered as a whole:

> *"A programming tool configured for programming a first computing device, said programming tool comprises a computer readable medium embodied or encoded with a computer program for said programming tool to generate codes or compiled data to be run by said first computing device; wherein said codes or compiled data represent at least a first and a second table....."*

This recitation when the claim is considered as a whole, clearly recites the following characteristics:

(a) The subject claimed invention is **NOT** a software program. It is a "programming tool" that comprises a computer program provided on computer readable medium.

(b) The programming tool is a "tool" that allows a user to program said first computing device. In another words, it is a tool that transforms said first computing device from a non-programmed formed into a programmed form for this fist computing device to provide some programmed performance. This programming tool is analogous to the hammer or other tools of a carpenter that enables the carpenter to transform a piece of wood (analogous to a unprogrammed computer) into a specific usable article (analogous to a properly programmed computer), such as a chair. Obviously this "tool" is a statutory useful machine.

(c) The programming tool claimed recites a practical application – a tool for a user to program said first computer, which satisfies the useful, concrete and tangible requirements of the Guideline for it to satisfy the requirement of 35 U.S.C. 101.

(d) The programming tool claimed "transformed" an article – "the first computer" from a unprogrammed state of no function into a functional programmed state. This transformation clearly satisfies the test of the Guideline to overcome a rejection under 35 U.S.C. 101.

(e) The computer program, part of the claimed tool is linked to a computer readable medium that satisfies the requirement of Section A3 above, mutually agreed between the examiner and the applicant to overcome a rejection under 35 U.S.C. 101.

(f) Independent method claim 92 corresponds to the device claim of 86 clearly recites the following characteristics, which obviously were not considered by the office action. The office action did not provide any comment on these recited characteristics, why they are inadequate to overcome the 35 U.S.C. 101 rejection:

(i) A practical application recitation that this is a "*method to program a computing device*" and the transformation process "*to execute one or more paths and to direct said computing device to perform in accordance to the objective of said paths*". Please refer to the discussion of subsections (b), (c) and (d) above.

(ii) A recitation to link the computer program represented by the computer program of state and paths with physical computer readable medium as in step (8) below:

"providing computer readable medium embodied or encoded with a computer program or computer executable instructions for representing said configuration states and said paths."

Please refer to the discussion of subsection (B1)(e) above.

If the rejection of claims 86-88 and 92-113 are to be withheld, the examiner is respectfully to clearly explain why the compliance of the subject independent claims as compared with the legal points of Section A as discussed above are inadequate to overcome the ground of rejection under 35 U.S.C. 101.

(B2) Claims 114-119:

The structure of independent claims 114 is identical to that of independent claim 92. The following recitations are failed to be considered by the office action. The office action also failed to comment why these claimed recitation, satisfying the legal point of Section A above are inadequate to overcome a rejection under 35 U.S.C. 101:

(i) A practical application recitation that this is a "*method to program a computing device*" and the transformation process "*to direct said*

computing device to perform in accordance to said predefined first objective". Please refer to the discussion of subsections (B1)(f)(i) above.

(ii) A recitation to link the computer program represented by the computer program of said task states with physical computer readable medium:

"providing computer readable medium embodied or encoded with a computer program or computer executable instructions for representing said task states."

Please refer to the discussion of subsections (B1)(f)(ii) above.

(B3) Claims 120-128:

The structure of independent claims 120 is identical to that of independent claim 92 excepts it refers to the inaction process between a computer system having a local computing device provided to program a remote computing device. **Actually this is a process or method claim corresponds to the computer system allowed in claim 176.** The following recitations are failed to be considered by the office action. The office action also failed to comment why these claimed recitation, satisfying the legal point of Section A above are inadequate to overcome a rejection under 35 U.S.C. 101:

(j) A practical application recitation that this is a "*method to program a remote computing device*" and the transformation process "*for said computing device to perform said predefined objective*". Please refer to the discussion of subsections (B1)(f)(i) above.

(ii) A recitation to link the computer program represented by the computer program of said task states with physical computer readable medium:

"providing computer readable medium embodied or encoded with a computer program or computer executable instructions comprising representation of aforementioned steps in a local computing device."

Please refer to the discussion of subsections (B1)(f)(ii) above.

(iii) A recitation of data downloading process as follow:

"downloading the encoded computer program or computer executable instructions of step (5) to said remote computing device though a communication link."

The office action failed to consider that fact that a process for a "computer system" comprising the "physical action" to download data from a local computing device of step (5) to a remote computing device through a communication link is clearly a statutory real world physical process. The claim language when considered as a whole clearly indicates that it is **NOT** a nonstatutory computer program as classified by the office action. Obviously it is **IMPOSSIBLE** for a nonstatutory computer program to perform the **physical act** of downloading data from one computer to another computer in a computer system.

(B4) Claims 135-147:

(a) The office action seems to ignore and did not provide any comment to the following recitation of independent claim 135, when the subject claims are considered as a whole:

"A method to compose a compiler suitable for a first computing device to compile a table format program,..... and to generate a program suitable to be executed by a second computing device,

This recitation when the claim is considered as a whole, clearly recites the practical application for a first computer to compile and generate a program suitable to be executed by a second computer. This specific practical application recited is useful, concrete and tangible and therefore comply with the requirement of Section A2 legal point according to the Guideline.

(b) A recitation to link the computer program represented by the table format program with physical computer readable medium as in step (7) below:

"providing computer readable medium embodied or encoded with a computer program or computer executable instructions representing said table format program."

Please refer to the discussion of subsection (B1)(e) above.

If the rejection of claims 135-147 are to be withheld, the examiner is respectfully to clearly explain why the compliance of the subject independent claims as compared with the legal points of Section A, well supported by the quoted MPEP and the Guideline as discussed above are inadequate to overcome the ground of rejection under 35 U.S.C. 101.

(B5) Claims 148-153:

(a) The office action seems to ignore and did not provide any comment to the following recitation of independent claim 148, when the subject claims are considered as a whole:

"A method to program a computing apparatus to perform in accordance to a pre-computer programming objective"

"configuring said program to be executable by said computing apparatus and directing said computing apparatus to perform in accordance to said pre-computer programming objective"

These recitations when the subject claim is considered as a whole, clearly recited the practical application for a computer of no specific function before it is programmed and directing it to perform a precomputer objective after it is programmed. This specific practical application recited is useful, concrete and tangible and therefore comply with the requirement of Section A2 legal point according to the Guideline.

(b) The recited characteristic of section (B5)(a) above "transformed" an article – "the computer" from a unprogrammed state of no function into a functional computer to perform a precomputer programming objective. This transformation clearly satisfies the test of the Guideline to overcome a rejection under 35 U.S.C. 101.

(c) A recitation to link the computer program represented by the table format program with physical computer readable medium as in step (7) below:

"providing computer readable medium embodied or encoded with a computer program or computer executable instructions representing said table format program."

Please refer to the discussion of subsection (B1)(e) above.

(B6) Claims 154-169:

(a) The office action seems to ignore and did not provide any comment to the following recitation of step (7) of the independent claim 154, when the subject claims are considered as a whole:

"configuring said aforementioned steps into a program executable by said computing apparatus"

The recited characteristic of step (7) above "transformed" the steps of (1) to (6) not executable by a computer into a program executable by a computer. This transformation clearly satisfies the test of the Guideline to overcome a rejection under 35 U.S.C. 101.

(b) A recitation to link the computer program represented by the table format program with physical computer readable medium was provided as in step (8) below, according to the interview between the examiner and the applicant for overcoming the ground of rejection under 35 U.S.C. 101:

"providing computer readable medium embodied or encoded with a computer program or computer executable instructions representing said table format program."

Please refer to the discussion of subsection (B1)(e) above.

If the rejection of claims 154-169 are to be withheld, the examiner is respectfully to clearly explain why the compliance of the subject independent claims as compared with the legal points of Section A, well supported by the quoted MPEP and the Guideline as discussed above are inadequate to overcome the ground of rejection under 35 U.S.C. 101.

(B7) Claims 170-175:

(a) The office action seems to ignore and did not provide any comment to the following recitation of step (4) of the independent claim 170, when the subject claims are considered as a whole:

"composing said program listing with the selected expression set"

This recited characteristic – to "compose a program" is a very strong evidence that the claimed method as a whole is **NOT** a computer program as indicated by the office action. Obviously the claimed physical action to "compose a program" is a physical process to be performed by a programmer, according to a person having ordinary knowledge in the art. If the ground of rejection is to be withheld, the examiner is respectfully requested to explain how it can happen in the real world, a nonstatutory computer program as interpreted by the office action can perform the physical act of "composing a program" as recited in the claim?

(b) A recitation to link the computer program represented by the table format program with physical computer readable medium was provided as in step (5) below, according to the interview between the examiner and the applicant for overcoming the ground of rejection under 35 U.S.C. 101:

"providing computer readable medium embodied or encoded with a computer program or computer readable codes representing said program listing."

Please refer to the discussion of subsection (B1)(e) above.

If the rejection of any of the above mentioned claims are to be withheld, the examiner is respectfully to clearly explain why the compliance of the subject independent claims as compared with the legal points of Section A, well supported by the quoted MPEP and the Guideline as discussed above are inadequate to overcome the ground of rejection under 35 U.S.C. 101.

The subject claims are required to be rectified according to the legal points of section A above to overcome the ground of rejection under 35 U.S.C. 101. Since the subject patent application had been examined by the USPTO for an unreasonably long time and that the applicant had demonstrated his cooperative approach to work with the examiner, the examiner is respectfully requested once again, according to MPEP 707.07(j), to propose proper wording, under the guidance of MPEP and the Guideline for the subject ground of rejection to be overcome.

Respectfully submitted by,

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